

Robert V. Prongay (SBN 270796)
Kara M. Wolke (SBN 241521)
Vahe Mesropyan (SBN 307244)
GLANCY PRONGAY & MURRAY LLP

1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150
E-mail: kwolke@glancylaw.com

Jennifer Pafiti (SBN 282790)
POMERANTZ LLP

468 North Camden Drive
Beverly Hills, CA 90210
Telephone: (818) 532-6449
E-mail: jpafiti@pomlaw.com

[Additional Counsel on Signature Page]
Attorneys for Class Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SUNIL SUDUNAGUNTA,
Individually and on behalf of all
others similarly situated,

Plaintiff,

v.

NANTKWEST, INC., PATRICK
SOON-SHIONG, RICHARD
GOMBERG, BARRY J. SIMON,
STEVE GORLIN, MICHAEL D.
BLASZYK, HENRY JI, RICHARD
KUSSEROW, JOHN T. POTTS, JR.,
ROBERT ROSEN, JOHN C.
THOMAS JR., MERRILL LYNCH,
PIERCE, FENNER & SMITH, INC.,
CITIGROUP GLOBAL MARKETS
INC., JEFFERIES LLC, PIPER
JAFFRAY & CO., and MLV & CO.,
LLC.,

Defendants.

Case No. 16-cv-01947-MWF-JEM

Consolidated with
2:16-cv-3438-MWF-JEM

CLASS ACTION

**PLAINTIFFS' REPLY IN
SUPPORT OF (i) MOTION FOR
FINAL APPROVAL OF
SETTLEMENT, AND (ii) MOTION
FOR AWARD OF ATTORNEYS'
FEES, REIMBURSEMENT OF
LITIGATION EXPENSES, AND
PLAINTIFFS' AWARDS**

Date: April 29, 2019
Time: 10:00 a.m.
Before: Hon. Michael Fitzgerald
Courtroom: 5A

REPLY ISO MOTION FOR FINAL APPROVAL OF SETTLEMENT,
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND AWARDS

TABLE OF CONTENTS

I.	The Absence of Objections Strongly Supports Final Approval	1
II.	The Limited Number of Exclusions Strongly Supports Final Approval.....	3
III.	Conclusion.....	3

TABLE OF AUTHORITIES

Acosta v. Frito-Lay, Inc.,
No. 15-2128, 2018 U.S. Dist. LEXIS 75998 (N.D. Cal. May 4, 2018) 3

Etter v. Allstate Ins. Co.,
No. 17-0184, 2018 U.S. Dist. LEXIS 189136 (N.D. Cal. Nov. 4, 2018)..... 3

In re HiEnergy Techs.,
SA CV 04-1226-VBF(JTLx),
2010 U.S. Dist. LEXIS 147929 (C.D. Cal. Sep. 22, 2010) 2

In re Mego Financial Sec Litig,
213 F. 3d 454 (9th Cir 2000) 3

In re Washington Public Power Supply System Sec. Litig.,
MDL No. 551, 1988 U.S. Dist. LEXIS 16532
(W.D. Wash. July 28, 1988) 1-2

Mathein v. Pier 1 Imps. (U.S. Remodelers.), Inc.,
C 09-05112 JSW, 2018 U.S. Dist. LEXIS 71386
(N.D. Cal. Aug. Apr. 27, 2018) 3

Maxin v. RHG & Co.,
No. 16-2625, 2018 U.S. Dist. LEXIS 26795 (S.D. Cal. Feb. 16, 2018) 3

Officers for Justice v. Civil Service Commission,
688 F.2d 615 (9th Cir. 1982) 2

Rinky Dink, Inc. v. World Bus. Lenders, LLC,
No. C14-0268-JCC, 2016 U.S. Dist. LEXIS 70858
(W.D. Wash. May 31, 2016) 3

Saldivar v. Priority One Med. Transp., Inc.,
No. CV 09-04789, 2011 U.S. Dist. LEXIS 163720
(C.D. Cal. Mar. 22, 2011)..... 2

Scott v. HSS Inc.,
8:14-cv-01911-JLS-RNB,
2017 U.S. Dist. LEXIS 207758 (C.D. Cal. Dec. 18, 2017)..... 2

REPLY ISO MOTION FOR FINAL APPROVAL OF SETTLEMENT,
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND AWARDS

1 Lead Plaintiffs and Class Representatives Donald Hu and Brayton Li (“Class
2 Plaintiffs”) respectfully submit this Reply in further support of their motions for:

3 (1) Final Approval of Class Action Settlement and Plan of Allocation
4 (“Final Approval Motion”); and

5 (2) Award of Attorneys’ Fees, Reimbursement of Litigation Expenses,
6 and Plaintiffs’ Awards (“Fee Motion”).

7 This Reply is supported by the Supplemental Declaration of Luiggy Segura
8 Regarding (A) Mailing Of Notice of Pendency and Settlement of Class Action, and
9 Proof of Claim and Release; and (B) Request for Exclusions and Objections
10 (“Supp. Mailing Decl.”), attached hereto as Exhibit 1.

11 The Court-ordered deadline for Class Members to object to the fairness,
12 reasonableness, or adequacy of the Settlement, Plan of Allocation, Attorneys’ Fees
13 and Expenses, or the Class Plaintiffs’ Award Application, or to opt-out of the Class
14 or Settlement elapsed on April 15, 2019. As of this filing, no Class Member has
15 objected and only a single investor representing only 30 shares requested
16 exclusion. Accordingly, the reaction of the Class Members to the proposed
17 Settlement, Plan of Allocation, attorneys’ fees and expenses, and application for
18 Class Plaintiffs’ Awards supports entering the Proposed Order of Final Judgment.¹

19
20 **I. The Absence of Objections Strongly Supports Final Approval**

21 It has long been held that the “reaction of the class members to the proposed
22 settlement is . . . an important factor in evaluating the fairness of the settlement.”
23 *In re Washington Public Power Supply System Sec. Litig.*, MDL No. 551, 1988

24
25
26 ¹ Attached as Exhibit 2 is a revised proposed order for final approval of the
27 Settlement (“Revised Proposed Order and Final Judgment”) that identifies in
28 Paragraph 7 the request for exclusion, but is otherwise identical to the proposed
order previously submitted as ECF No. 180. *See* Ex. B. at 4, ¶7.

1 U.S. Dist. LEXIS 16532, at *8 (W.D. Wash. July 28, 1988) (citing *Officers for*
 2 *Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

3 Here, after completing a robust notice program that included mailing 25,375
 4 Settlement Notice Packets to identifiable Class Members or their nominees,
 5 publishing summary notice over PR Newswire, and publishing all documents
 6 relevant to the Settlement on the Settlement Administrator's website, not a single
 7 Class Member has raised any objection to any aspect of the Settlement, the Plan of
 8 Allocation, or the Motion for Attorneys' Fees or Expenses, or the request for Class
 9 Plaintiffs' Awards. See Supp. Mailing Decl. at ¶¶ 6-8. Courts have recognized
 10 that a lack of any objection supports final approval. See, e.g., *Scott v. HSS Inc.*,
 11 8:14-cv-01911-JLS-RNB, 2017 U.S. Dist. LEXIS 207758, at *14 (C.D. Cal. Dec.
 12 18, 2017); *Saldivar v. Priority One Med. Transp., Inc.*, No. CV 09-04789, 2011
 13 U.S. Dist. LEXIS 163720, at *21-22 (C.D. Cal. Mar. 22, 2011); *In re HiEnergy*
 14 *Techs.*, SA CV 04-1226-VBF(JTLx), 2010 U.S. Dist. LEXIS 147929, at *5-6
 15 (C.D. Cal. Sep. 22, 2010).

16 Class Members' lack of objection also supports the request for attorneys'
 17 fees, expenses, and compensatory awards to Class Plaintiffs. The Notices mailed
 18 to each potential Class Member identified the maximum amount that would be
 19 sought for each of these items, affording Class Members the opportunity to address
 20 any portion they deemed unreasonable. See ECF No. 173-1 at pp. 45, 49-50. As
 21 another court in this Circuit recently stated:

22 The absence of any objections to the settlement also supports
 23 the award of the attorneys' fees sought in this case. The class notices
 24 specifically advised class members that class counsel would seek one-
 25 third of the fund for attorneys' fees, as well as reimbursement for any
 26 costs for litigation. No objections to the proposed settlement were
 27 received, and only three class members opted out of the settlement.
 28 Therefore, this attorneys' fee arrangement clearly appears to have the
 support of the class.

1 *Mathein v. Pier 1 Imps. (U.S. Remodelers,.) Inc.*, C 09-05112 JSW, 2018 U.S.
 2 Dist. LEXIS 71386, *27-28 (N.D. Cal. Aug. Apr. 27, 2018) (citations omitted).²

3 **II. The Limited Number of Exclusions Strongly Supports Final Approval**

4 Upon the Court granting Preliminary Approval of the Class, Class Counsel
 5 caused the Settlement Administrator to disseminate the Notice of Proposed
 6 Settlement of Class Action. To date, only one (1) Class Member, with only 30
 7 shares, has requested to be excluded from the Settlement. *See* Supp. Mailing
 8 Decl., ¶ 6. As provided in the Notice, Class Plaintiffs estimate that the Settlement
 9 covers 9,531,200 damaged shares. Accordingly, the single exclusion represents
 10 only 0.00000315% of the shares covered by the Settlement. That the
 11 overwhelming majority – indeed, virtually all – of eligible investors opted to
 12 remain in the Class strongly supports final approval. *See, e.g., In re Mego*
 13 *Financial Sec Litig*, 213 F. 3d 454, 459 (9th Cir 2000); *Rinky Dink, Inc. v. World*
 14 *Bus. Lenders, LLC*, No. C14-0268-JCC, 2016 U.S. Dist. LEXIS 70858, at *9-10
 15 (W.D. Wash. May 31, 2016).

17 **III. Conclusion**

18 Accordingly, for all of the reasons stated herein, and in the Final Approval
 19 Motion and Fee Motion, the Court should enter the Revised Proposed Order and
 20 Final Judgment and the Proposed Order Awarding Attorneys’ Fees and
 21 Reimbursement of Litigation Expenses.

22 ² *See also Etter v. Allstate Ins. Co.*, No. 17-0184, 2018 U.S. Dist. LEXIS 189136,
 23 at *8 (N.D. Cal. Nov. 4, 2018) (“The absence of objections from class members
 24 further supports the reasonableness and fairness of the settlement terms.”); *Acosta*
 25 *v. Frito-Lay, Inc.*, No. 15-2128, 2018 U.S. Dist. LEXIS 75998, *35 (N.D. Cal.
 26 May 4, 2018) (“The absence of objections or disapproval by class members to a 25
 27 percent fee supports the finding that Plaintiffs’ request is reasonable.”); *Maxin v.*
 28 *RHG & Co.*, No. 16-2625, 2018 U.S. Dist. LEXIS 26795, *17 (S.D. Cal. Feb. 16,
 2018) (“This unanimous class approval and absence of fee-specific objections
 weighs in favor of the Court approving the Fee Motion.”).

1
2 Dated: April 22, 2019

3
4 **GLANCY PRONGAY & MURRAY LLP**

5 By: Kara M. Wolke

6 Robert V. Prongay

7 Kara M. Wolke

8 Vahe Mesropyan

9 1925 Century Park East, Suite 2100

10 Los Angeles, California 90067

11 Telephone: (310) 201-9150

12 E-mail: rprongay@glancylaw.com

13 kwolke@glancylaw.com

14 *Liaison Counsel for Class Plaintiffs*

15 **POMERANTZ LLP**

16 Jennifer Pafiti (SBN 282790)

17 468 North Camden Drive

18 Beverly Hills, CA 90210

19 Telephone: (818) 532-6449

20 E-mail: jpafiti@pomlaw.com

21 **POMERANTZ LLP**

22 Patrick V. Dahlstrom

23 Joshua B. Silverman

24 Omar Jafri

25 Ten South La Salle Street, Suite 3505

26 Chicago, Illinois 60603

27 Telephone: (312) 377-1181

28 E-mail: pdahlstrom@pomlaw.com

jbsilverman@pomlaw.com

oafri@pomlaw.com

BRAGAR EAGEL & SQUIRE P.C.

David J. Stone (SBN 208961)

Marion C. Passmore (SBN 228474)

Melissa A. Fortunato (SBN 319767)

885 Third Avenue, Suite 3040

New York, New York 10022

Telephone: (212) 308-5858

Email: stone@bespc.com

passmore@bespc.com

fortunato@bespc.com

Co-Lead Counsel for Class Plaintiffs

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
- -

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SUNIL SUDUNAGUNTA,

v.

NANTKWEST, INC., et al.

Case No. 16-cv-1947-MWF (JEMx)

Hon. Michael W. Fitzgerald

Class Action

**SUPPLMENTAL DECLARATION OF LUIGGY SEGURA REGARDING:
(A) MAILING OF NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION,
AND PROOF OF CLAIM AND RELEASE; AND (B) REQUESTS FOR EXCLUSIONS
AND OBJECTIONS**

I, Luiggy Segura, declare as follows:

1. I am a Senior Project Manager of Securities Class Actions at JND Legal Administration (“JND”). Pursuant to paragraph 5 of the Court’s Proposed Order Preliminarily Approving Settlement and Providing for Notice, which was filed on January 9, 2019 (Docket (“Dkt.”) No. 177, the “Preliminary Approval Order”), JND was appointed to act as the Settlement Administrator in connection with the proposed settlement of the above-captioned action (“Action”).¹ I submit this Declaration as a supplement to my earlier declaration, the Declaration of Luiggy Segura Regarding: (A) Mailing of Notice of Pendency and Settlement of Class Action, and Proof of Claim and Release; (B) Publication of Summary Notice of Class Action; and (C) Report on Requests for Exclusions and Objections Received to Date, dated April 3, 2019, ECF No. 184-1 (the “Initial Mailing Declaration”). The following statements are based on my personal knowledge and information provided to me by other experienced JND employees, and, if called as a witness, I could and would testify competently thereto.

¹ Unless otherwise stated, all capitalized terms used herein have the same definitions as assigned in the Preliminary Approval Order or Stipulation of Settlement, dated October 31, 2018 (Dkt. No. 173-1) (“Stipulation”).

CONTINUED DISSEMINATION OF THE NOTICE PACKET

2. Since the execution of the Initial Mailing Declaration, JND has not received any additional Notice Packet requests. Through April 18, 2019, JND has disseminated an aggregate of 25,375 Notice Packets to potential Settlement Class Members and nominees.

UPDATE ON CALL CENTER SERVICES AND SETTLEMENT WEBSITE

3. JND continues to maintain the toll-free telephone number (1-888-663-1726) and Interactive Voice Recording (“IVR”) to accommodate potential Settlement Class Members. Through April 18, 2019, there have been a total of 172 calls to the toll-free telephone number. JND has promptly responded to each telephone inquiry and will continue to address potential Class Members’ inquiries.

4. JND also continues to maintain the website dedicated to the Settlement, www.NantKwestSecuritiesLitigation.com (the “Settlement Website”) to assist potential Class Members. Through April 18, 2019, the Settlement Website has received 2,005 visits. The website will continue to be updated with relevant case information and court documents.

**REPORT ON OBJECTIONS AND
EXCLUSION REQUESTS RECEIVED TO DATE**

5. The Notice informs potential Class Members that requests for exclusion from the Class are to be addressed to NantKwest Securities Litigation, c/o JND Legal Administration, P.O. Box 91230, Seattle, Washington, 98111, such that they were postmarked no later than April 15, 2019.

6. Through April 18, 2019, JND has received 1 request for exclusion. Attached hereto as Exhibit A is the request for exclusion.

7. The Notice informs potential Class Members that objections from the Class were to be addressed to each counsel of record.

8. Through April 18, 2019, JND has not received, from counsel or otherwise, a single objection to the Settlement, any part of the Settlement, or Class Counsel's motion for attorneys' fees and expenses, and application for awards to Class Plaintiffs. The deadline to file objections was also April 15, 2019.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on April 19, 2019.

Luiggy Segura
Luiggy Segura

EXHIBIT A

April 12, 2019

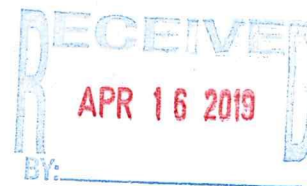
To:

NantKwest Securities Litigation – Exclusion

c/o JND Legal Administration

P.O. Box 91230

Seattle, WA 98111



From:

Robert Dean Ehlen

Napa, CA 94558-3046

Litigation Administrator,

I, Robert Dean Ehlen, am requesting exclusion from the class in the matter of SUNIL SUDUNAGUNTA v. NANTKWEST, INC., et al.

Purchase transaction as follows:

July, 28 2015 NANTKWEST common stock 30 shares value approximate \$1037.00 dollars.

No additional purchases of NANTKWEST stock.

Sell transaction as follows:

No sell transactions as of April, 12 2019.

Thank you,

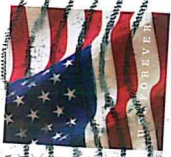
Robert Dean Ehlen

Robert Dean Ehlen
Napa, CA 94558-3046



OAKLAND CA 945

13 APR 2019 PM 4 L



Nant West Securities Litigation - Evidentiary
C/o IND Regal Administration
P.O. Box 91230
Seattle WA 98111

98111-983030



EXHIBIT 2

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SUNIL SUDUNAGUNTA

v.

NANTKWEST, INC., PATRICK
SOON-SHIONG, RICHARD
GOMBERG, BARRY J. SIMON,
STEVE GORLIN, MICHAEL D.
BLASZYK, HENRY JI, RICHARD
KUSSEROW, JOHN T. POTTS, JR.,
ROBERT ROSEN, JOHN C.
THOMAS JR., MERRILL LYNCH,
PIERCE, FENNER & SMITH, INC.,
CITIGROUP GLOBAL MARKETS
INC., JEFFERIES LLC, PIPER
JAFFRAY & CO., and MLV & CO.,
LLC.,

Case No. 16-cv-01947-MWF-JEM

Consolidated with
2:16-cv-3438-MWF-JEM

CLASS ACTION

**[PROPOSED] JUDGMENT AND
ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 29, 2019
Time: 10:00 a.m.
Before: Hon. Michael Fitzgerald
Courtroom: 5A

1 WHEREAS, the Court is advised that the Parties,¹ through their counsel, have
2 agreed, subject to Court approval following notice to the Class and hearings, to settle the
3 Actions upon the terms and conditions set forth in the Stipulation of Settlement dated
4 October 31, 2018 (the “Stipulation”), which was filed with the Court; and

5 WHEREAS, on January 9, 2019, the Court entered its Order Preliminarily
6 Approving Settlement and Providing for Notice, which preliminarily approved the
7 Settlement, and approved the form and manner of notice to the Class of the Settlement,
8 and said notice having been issued, and the fairness hearing having been held;

9 NOW, THEREFORE, based upon the Stipulation and all of the filings, records,
10 and proceedings herein, and it appearing to the Court upon examination that the
11 Settlement set forth in the Stipulation is fair, reasonable, and adequate, and upon a
12 Settlement Final Approval Hearing having been held after notice to the Class of the
13 Settlement to determine if the Settlement is fair, reasonable, and adequate and whether
14 the Judgment should be entered in this Action;

15 **THE COURT HEREBY FINDS AND CONCLUDES THAT:**

16 A. The provisions of the Stipulation, including definitions of the terms used
17 therein, are hereby incorporated by reference as though fully set forth herein.

18 B. This Court has jurisdiction of the subject matter of this Action and over all
19 of the Parties and all members of the Class.

20 D. The form, content, and method of dissemination of notice given to the Class
21 was adequate and reasonable and constituted the best notice practicable under the
22 circumstances, including individual notice to all Class Members who could be identified
23 through reasonable effort.

24 ¹ As used herein, the term “Parties” refers to Donald Hu and Brayton Li (“Class
25 Plaintiffs”) and Defendants NantKwest, Inc. (“NantKwest”), Patrick Soon-Shiong,
26 Richard Gomberg, Barry J. Simon, Steve Gorlin, Michael D. Blaszyk, Henry Ji, Richard
27 Kusserow, John T. Potts, Jr., Robert Rosen, and John C. Thomas Jr., Merrill Lynch,
28 Pierce, Fenner & Smith, Incorporated, Citigroup Global Markets Inc., Jefferies LLC,
Piper Jaffray & Co., and MLV & Co., LLC.

1 E. Notice, as given, complied with the requirements of the Federal Rules of
2 Civil Procedure, satisfied the requirements of due process, as well as the Private
3 Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78-u4(a)(7), and
4 constituted due and sufficient notice of the matters set forth herein. The Court finds that
5 a full opportunity has been afforded to Class Members to object to the Settlement and/or
6 to participate in the Final Approval Hearing. Furthermore, the Court hereby affirms that
7 due and sufficient notice has been given to the appropriate State and Federal officials
8 pursuant to the Class Action Fairness Act, 28 U.S.C § 1715.

9 F. The Settlement set forth in the Stipulation is fair, reasonable, and adequate.
10 In making this determination, the Court has considered factors with respect to fairness,
11 which include “(1) the strength of the plaintiff’s case; (2) the risk, expense, complexity
12 and likely duration of further litigation; (3) the risk of maintaining class action status
13 throughout trial; (4) the amount offered in settlement; (5) the extent of discovery
14 completed; (6) the experience and views of counsel; (7) the presence of a governmental
15 participant; (8) the reaction of the class members to the proposed settlement; and (9) the
16 absence of collusion in the settlement procedure.” *Churchill Vill., L.L.C. v. Gen. Elec.*,
17 361 F.3d 566, 575 (9th Cir. 2004).

18 (i) The Settlement was vigorously negotiated at arm’s length by Class
19 Plaintiffs on behalf of the Class and by Defendants, all of whom were represented by
20 highly experienced and skilled counsel. The case settled only after: (a) a mediation
21 conducted by an experienced mediator who was thoroughly familiar with this litigation;
22 (b) the exchange of detailed mediation statements prior to the mediation which
23 highlighted the factual and legal issues in dispute; (c) extensive paper and deposition
24 discovery; and (d) class certification. Accordingly, both Class Plaintiffs and Defendants
25 were well-positioned to evaluate the Settlement value of this Action. The Stipulation has
26 been entered into in good faith and is not collusive.

1 (ii) If the Settlement had not been achieved, both Class Plaintiffs and
2 Defendants faced the expense, risk, and uncertainty of extended litigation. The Court
3 takes no position on the merits of either Class Plaintiffs' or Defendants' arguments, but
4 notes these arguments as evidence in support of the reasonableness of the Settlement.

5 G. Class Plaintiffs and Class Counsel have fairly and adequately represented
6 the interest of the Class Members in connection with the Settlement.

7 H. Class Plaintiffs, all Class Members, and Defendants are hereby bound by
8 the terms of the Settlement set forth in the Stipulation.

9 **IT IS HEREBY ORDERED THAT:**

10 1. The Settlement on the terms set forth in the Stipulation is finally approved
11 as fair, reasonable, and adequate. The Settlement shall be consummated in accordance
12 with the terms and provisions of the Stipulation. The Parties are to bear their own costs
13 and attorneys' fees, except as otherwise provided in the Stipulation and, as among
14 Defendants, as governed by any contract existing between or among two or more
15 Defendants.

16 2. All Released Parties as defined in the Stipulation are released in accordance
17 with, and as defined in, the Stipulation.

18 Upon the Effective Date, Class Plaintiffs and each Class Member shall be deemed
19 to have, and by operation of this Judgment shall have, fully, finally, and forever released,
20 relinquished, and discharged all Released Claims against the Released Parties, whether
21 or not such Class Member executes and delivers a Proof of Claim and Release. Nothing
22 contained herein shall, however, bar any action or claim to enforce the terms of the
23 Stipulation or this Judgment.

24 3. Upon the Effective Date, each of the Defendants shall be deemed to have,
25 and by operation of this Judgment shall have, fully, finally, and forever released
26 Plaintiffs and Class Counsel from any claim related to this Action or the prosecution
27
28

1 thereof. Nothing contained herein shall, however, bar any action or claim to enforce the
2 terms of the Stipulation or this Judgment.

3 4. Upon the Effective Date, in accordance with 15 U.S.C. § 78u-4(f)(7)(A), all
4 Persons shall be enjoined and barred from commencing or continuing any claim, cross-
5 claim, third-party claim, claim over, or action in any forum against the Released Parties,
6 seeking, as damages, indemnity, contribution, or otherwise, the recovery of all or part of
7 any liability or settlement which such persons (i) paid, (ii) were obligated to pay or
8 agreed to pay, or (iii) may become obligated to pay to the Settlement Class, as a result of
9 such persons' liability for or participation in any acts, facts, statements or omissions that
10 were or could have been alleged in the Action. Further, upon the Effective Date,
11 NantKwest and the Individual Defendants shall be enjoined and barred from
12 commencing or continuing any claim, cross-claim, third-party claim, claim over, or
13 action in any forum against the Underwriter Defendants, seeking, as damages, indemnity,
14 contribution, or otherwise, the recovery of all or part of any sum (including but not
15 limited to attorneys' fees) that NantKwest or any Individual Defendant paid, was
16 obligated to pay or agreed to pay, or may become obligated to pay, arising from the
17 Action. Notwithstanding the foregoing, nothing herein shall affect other obligations or
18 claims between or among the Released Parties, including any contractual obligations
19 NantKwest may have to pay or reimburse defense costs (including reasonable attorneys'
20 fees) incurred in the Action by the Underwriter Defendants, or claims, cross-claims,
21 third-party claims, claims over, or actions based on any such obligations.

22 5. All Class Members who have not made their objections to the Settlement, or
23 any aspect thereof (including Plaintiffs' application for an award of attorneys' fees and
24 for reimbursement of their out-of-pocket costs incurred in the prosecution of the Action
25 (the "Fee Request")), in the manner provided in the Notice are deemed to have waived
26 any objections by appeal, collateral attack, or otherwise.

1 6. All Class Members who have failed to properly file requests for exclusion
2 (requests to opt out) from the Class are bound by the terms and conditions of the
3 Stipulation and this Final Judgment.

4 7. The request for exclusion identified in Exhibit A to this Judgment is
5 accepted by the Court.

6 8. All other provisions of the Stipulation are incorporated into this Judgment
7 as if fully set forth herein. To the extent that the terms of this Judgment conflict with the
8 terms of the Stipulation, the Stipulation shall control.

9 9. Plaintiffs are hereby barred and enjoined from instituting, commencing,
10 maintaining, or prosecuting in any court or tribunal any of the Released Claims against
11 any of the Released Parties.

12 10. Neither the Stipulation nor the Settlement, nor any act performed or
13 document executed pursuant to or in furtherance of the Stipulation or the Settlement:
14 (a) is or may be deemed to be, or may be used as, a presumption, concession, or
15 admission of, or evidence of, the validity of any Released Claim or of any wrongdoing or
16 liability of the Defendants or any of the Released Parties; or (b) is or may be deemed to
17 be, or may be used, as a presumption, concession, or admission of, or evidence of, any
18 fault or omission of any of the Defendants or any of the Released Parties in any civil,
19 criminal or administrative proceeding in any court, administrative agency or other
20 tribunal; or (c) is or may be deemed to be an admission or evidence that any claims
21 asserted by Class Plaintiffs lacked merit in any civil, criminal or administrative
22 proceeding. Defendants and the Released Parties may file the Stipulation and/or this
23 Judgment in any action that may be brought against them in order to support a defense or
24 counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith
25 settlement, judgment bar or reduction, or any other theory of claim preclusion or issue
26 preclusion or similar defense or counterclaim.

1 11. Pursuant to, and in full compliance with, the Federal Rules of Civil
2 Procedure, this Court hereby finds and concludes that due and adequate notice was
3 directed to all Persons and entities who are Class Members advising them of the Plan of
4 Allocation and of their right to object thereto, and a full and fair opportunity was
5 accorded to all Persons and entities who are Class Members to be heard with respect to
6 the Plan of Allocation.

7 12. The Court hereby finds and concludes that the formula for the calculation of
8 the claims of Authorized Claimants, which is set forth in the Notice of Proposed
9 Settlement of Class Actions sent to Class Members, provides a fair and reasonable basis
10 upon which to allocate the net proceeds of the Settlement among Class Members, with
11 due consideration having been given to administrative convenience and necessity.

12 13. A separate order shall be entered regarding Class Counsel's Fee and
13 Expense Application and any Compensatory Award Application. The finality of this
14 Judgment shall not be affected, in any manner, by rulings that the Court may make on
15 the Fee and Expense Application, or any Compensatory Award Application.

16 14. In the event that the Stipulation is terminated in accordance with its terms:
17 (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and
18 (ii) the Action shall proceed as provided in the Stipulation.

19 15. Without affecting the finality of this Judgment in any way, this Court retains
20 continuing jurisdiction over: (a) implementation of this Settlement and any award or
21 distribution of the Settlement Fund, including interest earned thereon; (b) disposition of
22 the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest
23 and expenses in the Action; and (d) all Parties hereto for the purpose of construing,
24 enforcing, and administering the Stipulation.

1 16. The Court finds and concludes that during the course of this Action, the
2 Defendants, Defendants' Counsel, Class Plaintiffs and Class Counsel complied with the
3 requirements of Rule 11 of the Federal Rules of Civil Procedure. No Party or their
4 respective counsel violated any of the requirements of Rule 11 of the Federal Rules of
5 Civil Procedure with respect to any of the complaints filed in this Action, any responsive
6 pleadings to any of the above complaints or any motion with respect to any of the above
7 complaints.

8
9 IT IS SO ORDERED.

10
11 Dated: _____

HONORABLE MICHAEL W. FITZGERALD
UNITED STATES DISTRICT JUDGE

Exhibit A

***Sunil Sudunagunta v. Nantkwest, Inc. et al*, Case No. 2:16-cv-01947-MWF-JEM (C.D. Cal.)**
Exclusion Report

Exclusion	Name	Date	City	State	Number of Shares
1.	Robert Dean Ehlen	4/12/2019	Napa	CA	Purchased 30 shares on 7/28/2015

PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On April 22, 2019, I served true and correct copies of the following document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 22, 2019, at Los Angeles, California.

s/ Kara M. Wolke

Kara M. Wolke